

<sup>1</sup> Claimant made a request for oral argument to the Board. That request was granted and oral argument was scheduled for August 20, 2010. Shortly before the hearing claimant's attorney withdrew his request for oral argument and both parties requested that the matter be deemed submitted. Accordingly, the Board moved this case to its summary calendar and the matter was deemed submitted on the record and the briefs effective August 20, 2010.

reimbursement for meal expenses related to his visit to the Craig Hospital. The Special Administrative Law Judge's denial of claimant's request was affirmed by the Board on March 22, 2010. The claimant then filed a motion for attorney fees and expenses.

The Administrative Law Judge (ALJ) awarded claimant's attorney post-award attorney fees for 25.45 hours at the rate of \$150 per hour for a total of \$3,817.50 as well as expenses incurred.

Claimant's attorney argues that the ALJ's Order awarding attorney fees and expenses should be affirmed but the determination of a reasonable hourly attorney fee should be modified to an hourly rate of \$175.

Respondent argues the ALJ's Order should be affirmed.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

There was no objection raised regarding the number of hours claimed nor claimant's attorney's entitlement to post-award attorney fees. The issue was submitted based upon claimant's itemization of time spent and argument of counsel. The sole issue raised by claimant's attorney is an objection to the hourly rate awarded.

The Kansas Workers Compensation Act permits a claimant to request post-award medical benefits<sup>2</sup> and authorizes an award of attorney fees in connection with that request.<sup>3</sup> The purpose of the attorney fee statute is to encourage attorneys to represent claimants in circumstances where there is no additional award of disability compensation from which a fee could be taken.<sup>4</sup> The general purpose of allowing attorney fees in these situations includes the policy reasons that (1) attorney fee awards serve to deter potential violators and encourage voluntary compliance with the statute involved; and (2) statutes allowing an award of attorney fees are not passed to benefit the attorney, but are passed to enable litigants to obtain competent counsel.<sup>5</sup> Thus, the Workers Compensation Act provides that an attorney who represents an employee is entitled to reasonable attorney fees for

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<sup>2</sup> K.S.A. 44-510k(a).

<sup>3</sup> K.S.A. 44-510k(c) and K.S.A. 44-536(g).

<sup>4</sup> *Robinson v. Golden Plains Health Care*, No. 239,485, 2004 WL 2522324 (Kan. WCAB Oct. 25, 2004).

<sup>5</sup> *Hatfield v. Wal-Mart Stores, Inc.*, 14 Kan. App. 2d 193, 199, 786 P.2d 618 (1990).

services rendered after the ultimate disposition of the initial and original claim. And if those legal services result in no additional award of disability compensation but result in an additional award of medical compensation or other benefits the administrative law judge may award attorney fees and costs on the claimant's behalf consistent with subsection (g) of K.S.A. 44-536.<sup>6</sup>

K.S.A. 44-536(g) provides:

In the event any attorney renders services to an employee or the employee's dependents, subsequent to the ultimate disposition of the initial and original claim, and in connection with an application for review and modification, a hearing for additional medical benefits, or otherwise, such attorney shall be entitled to reasonable attorney fees for such services, in addition to attorney fees received or which the attorney is entitled to receive by contract in connection with the original claim, and such attorney fees shall be awarded by the director on the basis of the reasonable and customary charges in the locality for such services and not on a contingent fee basis. If the services rendered under this subsection by an attorney result in an additional award of compensation, the attorney fees shall be paid from such amounts of compensation. If such services involve no additional award of compensation, the director shall fix the proper amount of such attorney's fees in accordance with this subsection and such fees shall be paid by the employer or the workers compensation fund, if the fund is liable for compensation pursuant to K.S.A. 44-567 and amendments thereto, to the extent of the liability of the fund.

K.S.A. 44-536 allows post-award attorney fees to be awarded on the "basis of the reasonable and customary charges in the locality for such services. . . ." <sup>7</sup> The Kansas Supreme Court has held that the administrative law judge is an expert when determining what is a reasonable and customary fee.<sup>8</sup> The ALJ found that an hourly fee of \$150 was reasonable and customary. The Board agrees and affirms.

### **AWARD**

**WHEREFORE**, it is the decision of the Board that the Award of Administrative Law Judge Nelsonna Potts Barnes dated June 4, 2010, is affirmed.

**IT IS SO ORDERED.**

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<sup>6</sup> K.S.A. 44-510k(c).

<sup>7</sup> K.S.A. 44-536(g).

<sup>8</sup> See *City of Wichita v. B G Products, Inc.*, 252 Kan 367, Syl. ¶ 2, 845 P.2d 649 (1993).

Dated this 31st day of August 2010.

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BOARD MEMBER

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c: Robert R. Lee, Attorney for Claimant  
Vincent A. Burnett, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge